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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,452	10/07/2003	David L. Anderson	27644.17	4504

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BRIGGS AND MORGAN P.A.
2200 IDS CENTER
80 SOUTH 8TH ST
MINNEAPOLIS, MN 55402

EXAMINER

CRAWFORD, GENE O

ART UNIT

PAPER NUMBER

3651

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/680,452

Applicant(s)

ANDERSON ET AL.

Examiner

Gene O. Crawford

Art Unit

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-26 is/are allowed.
- 6) ☒ Claim(s) 27-36 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/20/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

15

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 27-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katoch in view of Schweizer et al.

The apparatus for stacking items and method thereof disclosed by Katoch includes a receiving mechanism 17 for receiving items (figure 1); a stacking area 25 wherein the items are stacked one upon the other; a stacking mechanism 20 for receiving items from the receiving mechanism and stacking the items in the stacking area 25; a buffering mechanism for receiving incoming items when the stacking area is full in that an item 9 can be received in the shelf area while a full stack is in the stacking area 25 (figure 2); the stacking mechanism 20 including a plurality of shelves 36, 38; the buffering mechanism including the plurality of moving stacker shelves; the receiving mechanism 17 including a conveyor tracking the motion of the moving stacker shelves (column 3, lines 6-12 and 62-65); and the moving stacker shelves retracting sequentially to stack items (figures 2 and 3). Katoch does not show a stack unloading mechanism. However, Schweizer et al. discloses the broad teaching of providing a stacking forming apparatus with a stack removing device (column 4, line 63 thru column 5, line 3). It would have been obvious to one of ordinary skill in the art to provide the stacking

Art Unit: 3651

apparatus of Katoch include a stack removing device for clearing the stacking area for the next stack to be formed as is taught by Schweizer et al.

Allowable Subject Matter

3. Claims 1-26 are allowed.
4. Claim 31 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. The following is a statement of reasons for the indication of allowable subject matter: a apparatus for stacking items including the unique features of 'the conveyor moves in a direction opposite to the direction of motion of the moving stacker shelves, then tracks the motion of the moving stacker shelves' in combination with the rest of the claim language is not taught or fairly suggested by the prior art.
6. The following is an examiner's statement of reasons for allowance: an apparatus for stacking items and a method thereof including the unique features of 'a plurality of moving stacker shelves receiving the items from the stacker conveyor and a shifting mechanism for moving the stacker conveyor adjacent one of the plurality of moving stacker shelves' in combination with the rest of the claim language is not taught or fairly suggested by the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

Art Unit: 3651


accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following are cited to show the art with respect to stacking forming devices having moving stacker shelves: Balboni et al. and Dorner et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gene O. Crawford whose telephone number is 703/305-9733. The examiner can normally be reached on Monday thru Thursday. Applicant is made aware that as of April 2005 the examiner's new number will be 571/272-6911.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gene O. Crawford
Primary Examiner
Art Unit 3651
